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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,420	12/26/2000	Sergey N. Razumov	59036-012	9883

7590 12/31/2003

MCDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER
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FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/745,420

Applicant(s)

RAZUMOV, SERGEY N.

Examiner

Mark Fadok

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings filed on 12/26/2000 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftsperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

### **Examiner's Note**

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-9,12,13,15,17-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Tracy et al (5,979,757).**

**In regards to claim 1**, Tracy discloses a retail system comprising:  
at least one purchase ordering facility for providing representations of items offered for sale (col 2, lines 12-29), and  
at least one portable device movable by a customer for detecting indicia of said representations to select the items to be included in a purchase order (FIG 9, Item 240, barcode reader).

**In regards to claim 2**, Tracy teaches wherein the representation includes samples of the items (Col 7, lines 60-67).

**In regards to claim 3**, Tracy teaches wherein said portable device is configured to read the indicia of the samples (FIG 5, Item 122).

**In regards to claim 4**, Tracy teaches wherein said portable device is configured to display total price of a purchase after reading the indicia of each sample (col 8, lines 10-18).

**In regards to claim 5**, Tracy teaches wherein said portable device is configured to enable the customer to edit the purchase order (col 4, lines 9-19).

**In regards to claim 6**, Tracy teaches a purchase ordering terminal for enabling a customer to order products available for sale in the retail system including the items that are not represented in the purchase ordering facility (FIG 7C).

**In regards to claim 7**, Tracy teaches wherein the purchase ordering terminal is configured to enable the customer to continue placing the product order after selecting the items using the portable device (col 6, lines 27-51).

**In regards to claim 8**, Tracy teaches wherein the purchase ordering terminal is configured to read purchase order information from the portable device (col 6, lines 44-51).

**In regards to claim 9**, Tracy teaches wherein the purchase ordering terminal is configured to present an electronic catalog including the products available for sale in the retail system (FIG 7A-D).

**In regards to claim 10**, Tracy teaches wherein the purchase ordering terminal is configured to electronically simulate an Internet site (col 2, lines 41-56).

**In regards to claim 13**, Tracy teaches at least one output device for producing an output representing the purchase order (FIG 4, POS terminal).

**In regards to claim 15**, Tracy teaches wherein the purchase order is automatically transferred from the portable readable device to a central station when the portable device reads the indicia of the output device (col 3, lines 38-48).

**In regards to claim 17**, Tracy teaches wherein the output representing the purchase order controls a passing device that allows the customer to leave the purchase ordering facility (FIG 9, Item 190, checkout device).

**In regards to claim 18**, Tracy teaches wherein said output device includes a printer for printing out the purchase order ((FIG 6).

**In regards to claim 19**, Tracy teaches wherein a purchase ordered at said purchase ordering facility may be picked up at a retail facility remote from said purchase ordering facility (FIG 10).

**In regards to claim 20**, Tracy teaches wherein said portable device enables a customer to select the retail facility, to which the ordered purchase should be delivered (FIG 10).

**In regards to claim 21**, Tracy discloses a retail system having

multiple purchase ordering facilities for placing purchase orders (Col 3, line 60-67),

at least one of the retail facilities provides representations of a limited number of items offered for sale (col 6, lines 27-43, it should also be noted that it would be impossible to have an infinite number of products available for scanning at a brick and mortar facility, therefore the selection would inherently be limited) ,

said at least one of the retail facilities is provided with at least one purchase ordering terminal for enabling the customer to order all products available in the retail system (FIG 6).

**In regards to claim 22**, Tracy teaches wherein said at least one of the retail facilities is provided with at least one portable device movable by a customer for forming a purchase order based on the representations of the limited number of items offered for sale (FIG 9).

**In regards to claim 23**, Tracy teaches wherein the customer is enabled to combine purchase ordering using the portable device with the purchase ordering using the purchase ordering terminal (FIG 4).

**In regards to claim 24**, Tracy teaches wherein the purchase ordering terminal is configured for reading purchase order information from the portable device (FIG 4).

**In regards to claim 25**, Tracy discloses a retail system comprising  
a plurality of purchase ordering facilities for enabling customers to place  
purchase orders and a plurality of purchase checkout facilities for enabling the  
customers to receive ordered purchases (col 6, lines 26-51),

a customer being enabled to receive an ordered purchase at a purchase check-  
out facility remote with respect to a purchase ordering facility where the purchase was  
ordered (FIG 10).

**In regards to claim 26**, Tracy teaches wherein the purchase ordering facilities  
contain samples of items offered for sale to enable the customer to select required  
items (FIG 9).

**In regards to claim 27**, Tracy discloses a retail system controlled by a control  
system and comprising:

at least one storage facility for storing goods available for sale in the retail  
system (FIG 6, lines 27-51),

multiple purchase ordering facilities for enabling a customer to order a purchase  
(Col 6, lines 27-29, retail facilities), and

multiple purchase obtaining points (FIG 10),  
each purchase obtaining point enabling the customer to obtain the ordered  
purchase after a time period sufficient to deliver the ordered purchase from the storage  
facility to the purchase obtaining point (FIG 10).



**In regards to claim 28**, Tracy teaches wherein at least one of the purchase ordering facilities contain samples of a limited number of items offered for sale (col 6, lines 27-43, it should also be noted that it would be impossible to have an infinite number of products available for scanning a a brick and mortar facility, therefore the selection would inherently be limited).

**In regards to claim 29**, Tracy teaches wherein said at least one of the purchase ordering facilities contain at least one purchase ordering terminal for enabling the customer to order products available for sale in the retail system, including the items that are not represented by the samples (FIG 7C).

**In regards to claim 30**, Tracy discloses a method of selling goods comprising the steps of:

- storing goods available for sale in a storage facility (col 2, lines 12-29),
- presenting samples of the goods at a purchase ordering facility to enable a customer to order a purchase (FIG 9), and
- enabling the customer to obtain the ordered purchase at a purchase obtaining point after a time period sufficient to deliver the purchase from the storage facility to the purchase obtaining point (FIG 10).

**In regards to claim 31**, Tracy teaches wherein the purchase ordering facility presents samples of a limited number of items offered for sale (col 6, lines 27-43, it should also be noted that it would be impossible to have an infinite number of products available for scanning at a brick and mortar facility, therefore the selection would inherently be limited).

**In regards to claim 32**, Tracy teaches providing a purchase ordering terminal in the purchase ordering facility for enabling the customer to order products available for sale, including the items that are not represented by the samples (Fig 7C).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 10,11,14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy in view of Official Notice.**

**In regards to claims 10 and 11**, Tracy teaches providing, text video and audio over the internet (col 2, lines 30-40), but does not specifically mention that what is being projected on the device is a simulated store or game (the examiner makes note that in

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the specification, page 3, lines 11-16, of instant application's specification the applicant states "...the purchase ordering terminal may electronically simulate a store containing products available in the retail system, or a game, such as a soccer, hockey or football. Also, the purchase ordering terminal may simulate operations of an e-commerce Internet site"). It was old and well known in the art at the time of the invention to provide simulations over the Internet on various device displays. It would have been obvious to person having ordinary skill in the art at the time of the invention to include in Tracy the simulations as taught by the instant claims, because graphical representations especially those which simulate, have been known to provide superior information to a user attempting to make a decision or be entertained.

**In regards to claims 14 and 16,** Tracy teaches using a portable device to read selected indicia, which causes the device to provide certain functionality (see summary), and an output device in communication with the input device (FIG 6). Tracy, however, does not specifically teach that the output device has readable indicia and that these readable indicia cause the input device to respond. It was old and well known in the art at the time of the invention to have input devices respond to readable indicia (col 2, lines 41-55). Therefore, it would have been obvious to a person having ordinary skill in the art to include in Tracy the output device readable indicia as taught in claims 14 and 16, because this would provide information to the output device that the input device was present and provide instructions to the output device to begin processing. This in

turn would provide for a checkout point to be unmanned and thus save the retail outlet money.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vincent Millin** can be reached on **(703) 308-1065**.

**Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.**

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

**Alexandria, Va. 22313-1450**

or faxed to:

**(703) 872-9306** [Official communications; including  
After Final communications labeled  
"Box AF"]


**(703) 746-7206** [Informal/Draft communications, labeled

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"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.



Mark Fadok

Patent Examiner